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November 28, 2011

**Via ECF**

The Honorable George H. Lowe  
United States Magistrate Judge  
UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK  
Alexander Pirnie Federal Building  
U.S. Courthouse, 10 Broad Street  
Utica, NY 13501

**Re: Utica Mutual Ins. Co. v. Fireman's Fund Ins. Co., No. 6:09-CV-0853 (DNH/GHL)**

Dear Judge Lowe:

We represent Utica Mutual Insurance Company in the captioned matter and write regarding the Status Conference held on November 22, 2011.

On the afternoon of November 23, a text minute entry was entered on the docket about the Status Conference. The entry stated the following, in part: "Judge Lowe hears argument from both sides on the pending motions and reserves decision."

We learned about the November 22 conference by an email from Renata Hohl (Your Honor's Courtroom Deputy) on November 21. In her email, Ms. Hohl informed counsel for the parties that the Court "would like to have a conference call ASAP" and inquired about counsel's availability. The Court's subsequent Text Notice stated that a "Status Conference was set...." Therefore, we did not understand that the Court would hear argument on the pending motions.<sup>1</sup> See Local Rule 7.1(h) (providing that the Magistrate Judge can *sua sponte* require oral argument on a motion or can grant the request of a party for oral argument).

If the Court would like oral argument on the pending motions, Utica respectfully requests that oral argument be scheduled. Moreover, as we informed the Court before the Status Conference

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<sup>1</sup> At the time of the Status Conference, two motions were (and remain) pending: (1) Utica's Motion for Protective Order (Doc. 83); and (2) Utica's Motion to Strike (Doc. 92). For the Motion for Protective Order, the parties did not request oral argument. For the Motion to Strike, Utica did request oral argument. Fireman's Fund Insurance Company has not filed its opposition to the Motion to Strike, and therefore, we do not know if it will join in Utica's request for argument.

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(see Doc. 98), if the discussion during the conference was to include the issues raised in the November 21, letter from Fireman's Fund Insurance Company, Utica's lead attorney – Walter Andrews – would have needed to participate. Mr. Andrews was not available for the Status Conference because of his medical condition. Finally, if the Court would like oral argument on Utica's Motion to Strike, Utica respectfully requests that the argument take place after completion of the briefing for that motion.

Respectfully submitted,

/s/Walter J. Andrews

Walter J. Andrews

Syed S. Ahmad

cc: Mary Lopatto  
Nancy Monarch  
John Finnegan